

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:09-HC-2011-H

LEE WAYNE HUNT, )  
 )  
 Petitioner, )  
 )  
 )  
 )  
 v. )  
 )  
 )  
 )  
 GARY JONES, Superintendent, )  
 Johnston Correctional )  
 Institution, Smithfield, )  
 North Carolina, )  
 )  
 Respondent. )

**ORDER**

This matter is before the court on petitioner's motion for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was stayed by this court on November 18, 2011 in light of pending proceedings before the North Carolina Innocence Inquiry Commission ("Innocence Commission"). In 2014, the Innocence Commission closed its investigation with the consent of petitioner, after noting questions concerning its authority to consider evidence critical to petitioner's innocence claim.

United States Magistrate Judge Kimberly A. Swank held a status conference and following the conference, entered a Memorandum and Recommendation ("M&R") recommending that:

- (1) The stay previously entered in this case be lifted;
- (2) The court grant petitioner's motion to permit limited discovery; and
- (3) The court grant petitioner's motion for an evidentiary hearing.

Respondent filed objections to the M&R specifically objecting that:

- (1) Petitioner should not be allowed to depose Mr. James F. Coman and Mr. William N. Farrell, Jr. because to do so would allow a "fishing expedition" prohibited by Habeas Rule 6.
- (2) The court should not conduct an evidentiary hearing because petitioner received a full and fair MAR evidentiary hearing in the state post-conviction proceedings.

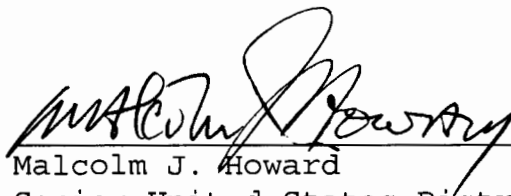
The court has carefully reviewed the record in this case, the motions pending before the court, the M&R of Judge Swank and the objections. A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved.

Therefore, the stay in this matter is hereby LIFTED. The petitioner's motion to permit limited discovery and for an evidentiary hearing [DE #34] is GRANTED in accordance with the recommendation detailed in the M&R. Also before the court

are respondent's motion to dismiss and motion for summary judgment. Respondent's motion to dismiss [DE #7] is DENIED as petitioner has raised a claim of actual innocence. See McQuiggin v. Perkins, 33 S.Ct. 1924 (2013). As to respondent's motion for summary judgment, having found that an evidentiary hearing is warranted, the court hereby denies without prejudice respondent's motion for summary judgment [DE #9].

This matter is hereby referred to Judge Swank for further case management and to hold an evidentiary hearing and enter an M&R in this matter.

This 8<sup>TH</sup> day of July 2015.

  
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Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
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